

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5731 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRANBEN A CHOTALIYA

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for Petitioner
SERVED BY DS for Respondent No. 1, 4, 5
MR DA BAMBHANIA for Respondent No. 2
MS SEJAL K MANDAVIA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/09/96

ORAL JUDGEMENT

Heard learned Advocates for the parties.

The petitioner herein is a Primary Teacher.
Pursuant to her request, she was transferred from Primary School, Ghantia to Primary School, Mafatiapara under

order dated 30th May, 1996. The said order indicates that the same was made in consonance with the Government Circular dated 1st December, 1994. The order also indicates that the said transfer was made pursuant to the request made by the petitioner. However, the said order of transfer was cancelled by order made on 25th July, 1996. Learned Advocate Mr. Bhatt appearing for the petitioner impugns the order dated 25th July, 1996 and submits that the transfer having been made pursuant to the petitioner's request, there was no justification in cancelling the same. He has further submitted that the said order of cancellation of transfer was served upon the petitioner while she was on leave. Mr. Bhatt has emphasized that there are vacancies in the Primary School, Mafatiapara and there is no need to transfer the petitioner out of Primary School, Mafatiapara. He further pleads that the original order of transfer made on 30th May, 1996 requires to be sustained.

In response to the notice issued by this Court, the respondents have contested the petition by filing counter affidavit. Learned Advocate Miss Mandavia appears for the District Primary Education Committee. She has submitted that on 30th May, 1996 as many as 500 transfers were ordered by the then District Primary Education Officer. In view of several complaints received against such transfers, an investigation was ordered and the deponent of the affidavit was instructed to investigate into the said transfers and submit his report. Upon investigation, he made report on 4th July, 1996, copy of which is produced for perusal. The said report reveals that the orders of transfers were made on 30th May, 1996 in utter disregard of the instructions issued by the Government in that behalf. Several irregularities committed in making such transfers has been listed in the said report. In so far as the transfer of the petitioner is concerned, it has been noted that there was no over set-up at Primary School, Ghantia. It has also been noted that there were as many as 11 vacancies under the pay centre concerned. The petitioner was transferred at her request though she was far junior. Considering this report, the Government on 17th July, 1996 directed the District Primary Education Officer, Junagadh to cancel all the transfers which were ordered on 30th May, 1996. The Government has issued further instructions to make the priority list of the requests made by the Primary Teachers for transfer to a suitable place. They were further directed that transfer should be made in accordance with the Government instructions and the transfer orders pursuant to such list shall be made only after the same is approved by the

Government. The necessary exercise has been done by the District Primary Education Officer and some ten transfers had been ordered under the order dated 17th August, 1996. Under the said orders, two Primary Teachers have been transferred to Primary School, Mafatiapara. Learned Advocate Mr. Bhatt has relied upon the said order and has emphasized that there were two vacancies in Primary School, Mafatiapara and that the petitioner ought to have been continued at Primary School, Mafatiapara. Be it noted that the two Primary Teachers transferred to Primary School, Mafatiapra under the order dated 7th August, 1996 have also been transferred pursuant to their requests. Thus, when there are more requests for transfer to a particular school than the vacancies available, the priority is required to be struck on the basis of seniority of such teachers. It is not the case of Mr. Bhatt that the petitioner's claim was prior to the said two Primary Teachers. In the circumstances, I need not interfere with the impugned order made on 25th July, 1996. Petition is therefore summarily rejected. Ad interim order is vacated. At this stage, Mr. Bhatt, learned Advocate for the petitioner requests that the ad interim order made earlier be continued for a period of fifteen days. The request is granted. Ad interim order made earlier shall continue to operate till 23rd September, 1996.

sf-rmd.